ment, which is more than ample notice to a licensee. The appeal is therefore dismissed with costs.

I would add that, while Mr. Peddie did not object to Mr. Ramani arguing on a point not raised in the Memorandum of Appeal, namely, as to the amount of damages or mesne profits awarded, I see no ground for interfering with the decision of the learned President, although I must say, with respect, that that portion of the order giving the appellants three months within which to vacate the premises is in my view entirely wrong in law.

Appeal dismissed.

Solicitors: *Braddell & Ramani; Bannon & Bailey.*

CHEW MING v. PUBLIC PROSECUTOR

[C. A. (Thomson C.J., Rigby and Hepworth JJ.) March 25, 1959]

[Ipoh — F.M. Criminal Appeal No. 5 of 1959]

Criminal Law and Procedure — Murder — Penal Code s.302 — Joinder of trial of three charges of murder — Undesirability of — Probative value of general evidence — Misdirection — Evidence of "vulnerable personality."

Theoretically no offence is committed except by a person who by reason either of psychological or moral deficiency is likely to commit offences. In that sense any evidence as to character or disposition has at least some limited probative value. However, the accepted rule of law is that such general evidence is not admissible, and to make any evidence of disposition admissible there must be some particular connection between it and the identity of the person who has committed a crime.

Observations on undesirability of joinder of trial of more than one charge of murder.

Cases referred to:—

(1) *R.* v. *Davis*, 26 Cr.App.R. 95; [1937] 3 All E.R. 537.

(2) *R.* v. *Straffen*, [1952] 2 Q.B. 911.

(3) *Thompson* v. *R.* [1918] A.C. 221.

COURT OF APPEAL. Appeal from the High Court at Seremban.

P. P. Dharmananda for the appellant.

Abdul Kadir bin Yusof (Federal Counsel) for the respondent.

Thomson C.J.: This appellant was tried before Smith J., at Seremban on three charges of murder in contravention of section 302 of the Penal Code. He was convicted on one of these charges and sentenced to death. He appealed against his conviction and we dismissed his appeal on 2nd March, 1959.

The charges arose out of three Chinese children aged 10, 7 and 4 years being found stabbed to death in a house in Mambau New Village. It was the case for the prosecution that all three children had been killed at the same time by one and the same person who was said to be the appellant. Presumably it was on this ground that the trial Judge decided to try the three charges together, a course to which no objection was taken either at the trial or before us. In our view no injustice was caused to the appellant by this course having been taken and the fact that it was taken is not in itself fatal to the conviction (see *R.* v. *Davis*(1)). Nevertheless we would reiterate the view of Lord Hewart, L.C.J., in the case cited that the trial together of more than one charge of murder is undesirable. That warning gains strength from what in fact happened in the present case. The jury found the verdict of guilty in respect of the first charge unanimously but in respect of the second and third charges they only found such verdicts by majorities and the trial Judge did not agree with these majority verdicts. How any reasonable jury could have been in such a state of mental confusion as clearly were some of this jury it is quite impossible to say for there is no reason to suppose that they were of any greater or less intelligence than other jurors. But although no injustice has been done in the present case the fact that such confusion did arise clearly shows that Lord Hewart's warning is very much in point in this country.

The case against the appellant consisted of a very strong body of circumstantial evidence. On the morning of 1st December, 1957, the mother of the children and her eldest son had gone to work leaving the three deceased children in her house of which a room was occupied by the appellant with his wife and daughter. On the morning in question the appellant had been away from home for about three days and his wife who had remained at home had gone to work leaving her child with a neighbour. About 11 a.m. the appellant came from the direction of the house with bloodstained clothing and complained to his sister that he had been attacked. He then went to the hospital where he was found to have injuries to his throat which in the opinion of the Doctor who examined him were self-inflicted. Shortly afterwards the Police went to the house and found the dead bodies of the children. Later in the day the mother of the children returned and found that some jewellery was missing from her bag. Some time later the appellant led the Police to a spot where they found the missing jewellery.

The appellant did not deny that he had killed the children. He elected to make a statement from the dock in which he said he often had headaches and when he had headaches he was upset and did not know what he did. He did not know in particular what happened on the day the children was killed. Evidence for the defence was given by the Medical Superintendent of the Tampoi Mental Hospital where the appellant had been under observation for some time. His evidence was to the effect that in his opinion the appellant had a 'vulnerable personality', that is to say, was a person on the borderline between sanity and insanity who was subject to uncontrollable outbursts of rage. His evidence did not go so far as saying that at the time of killing the children, if he did kill them, the appellant was by reason of unsoundness of mind incapable

of knowing the nature of his act or that he was doing what was either wrong or contrary to law. In effect it went no further than saying that what the appellant had done could have been done in consequence of irresistible impulse.

On this part of the case the trial Judge took the course which was perhaps unduly favourable to the appellant of leaving it to the Jury to find a verdict of not guilty on account of insanity. The Jury, however, did not bring in any such verdict and as no attack has been made before us on the relevant portion of the Judge's summing-up, with which in any event we can find no fault, it is not necessary to consider this part of the case any further.

Before us the conviction was attacked by Mr. Dharmananda in a very fair and persuasive argument on a number of grounds with none of which with one exception do we think it necessary to deal. It was said that in some respects the circumstantial evidence was not stated altogether correctly to the jury and that the summing-up was defective in dealing with the question of onus of proof. In our opinion except on one point the summing-up was not in any way open to criticism.

The point with which we are concerned arose in the following way. After discussing the various pieces of circumstantial evidence which made up by the prosecution case the Judge went on to say:—

"Now, those are the principal things on which the prosecution rely as pointing to the accused as the person who did this. I would draw your attention to one other thing and that is the medical evidence of Dr. Parampalam. He said that the accused is a type of person known as a 'vulnerable personality' and that such people can get into fits of depression and in those fits of depression can easily topple over the line of insanity and become suddenly violent, and that the killing which took place in that room is such a thing as one sometimes finds to have been done by a person with a 'vulnerable personality'. You are entitled to consider the case as a whole. You have some evidence which suggests that the accused belongs to the type of person who in particular circumstances will do that very sort of thing. Now, gentlemen, all those things, the prosecution say, add up irrefutably to the fact that it was the accused who did those killings."

In our opinion that passage amounted to a misdirection.

In the present case there is no question of Dr. Parampalam's evidence being inadmissible. Apart from anything else it was clearly admissible in relation to the question of insanity which was one of the issues in the case. The jury had listened to it. It was highly improbable that they would put it out of their minds when considering the issue of whether or not it was the appellant who killed the children and it was necessary that they should be given some guidance as to its bearing on that issue.

In that connection the evidence was relevant and admissible in so far, but only in so far, as it was evidence of propensity which went to prove the identity of the appellant with the person who killed the children. As was said by Slade, J., in the case of *Regina* v. *Straffen*[2] (at p. 916):—

"I can see no distinction in principle between the present case and *Thompson* v. *The King*,[3] to which we were referred, and, indeed, I think one cannot distinguish abnormal propensities from identification. Abnormal propensity is a means of identification. In *Thompson's* case evidence was admitted to prove his identity which showed that he was a person who suffered from the abnormal propensity of homosexuality. It is an abnormal propensity to strangle young girls and to do so without any apparent motive, without any attempt at sexual interference, and to leave their dead bodies where they can be seen and where, presumably, their deaths would be detected. In the judgment of the court, that evidence was admissible because it tended to identify the person who murdered Linda Bowyer with the person who confessed in his statements to having murdered the other two girls a year before, in exactly similar circumstances."

In our opinion, however, the present case differs from the cases of *Thompson* and *Straffen*.

In these cases the evidence which was held to be relevant was evidence of actual acts done by the accused from which the jury could draw their own inferences and not of general evidence of opinion as to disposition. Moreover, in both cases the evidence in question was of very strong probative value.

In *Thompson's* case it was at least morally certain that the offence with which the accused was charged were committed by a person of homosexual tendencies and the evidence which was admitted was that when the accused was arrested he was carrying powder puffs and that he had indecent photographs of boys in his room.

In *Straffen's* case the accused was charged with strangling a young girl without any attempt at sexual interference and without any attempt to conceal her body and there was no evidence of motive. The evidence which was admitted was that the accused had confessed to murdering two other girls the previous year in exactly similar circumstances.

In both cases the evidence of propensity had thus a very close logical bearing on the question of identity. In *Thompson's* case a prudent man might well say offences against boys are only committed by persons of homosexual tendencies. In *Straffen's* case a prudent man might say the killing was done in such extraordinary circumstances that it could only have been done by a man with a propensity for doing such things.

In the present case, however, this close logical connection was not present. Theoretically it may be true that no offence is committed except by a person who by reason either of psychological or moral deficiency is likely to commit offences. In that sense of course any evidence as to character or disposition has at least some very limited probative value. It is, however, the accepted rule of law that such general evidence is not admissible, and to make any evidence of disposition admissible there must be some particular connection between it and the identity of the person who has committed a crime as there was in *Thompson* and *Straffen*.

In the present case, in our opinion, there was no such particular connection. The children might have been killed by a person with a propensity for killing children. On the other hand on

the prosecution case they might have been killed because they were interfering with or were possible witnesses to the stealing of their absent mother's jewellery. In the circumstances we were of the opinion that the proper direction to the jury should have been that when considering the question of whether or not it was the appellant who did the killing they should disregard any evidence that went to show that the accused was the type of person who would do that very sort of thing.

Nevertheless we considered that in spite of the misdirection on this point no reasonable jury could on the evidence have come to any other conclusion than that it was the appellant who did the killing and we were accordingly of the opinion that no substantial miscarriage of justice had occurred and that the appeal should be dismissed by reason of the proviso to section 29(1) of the Courts Ordinance.

Appeal dismissed.

Solicitors: *Cheang Lee & Ong.*

PUBLIC PROSECUTOR v. LEONARD

[C. A. (Thomson C.J., Rigby and Ong JJ.) April 23, 1959]

[K. L. — F.M. Criminal Reference No. 3 of 1958]

Criminal Law and Procedure — Commencement of proceedings in Subordinate Courts — Jurisdiction to try criminal offences — "Information" and "complaint" distinguished — "Application for summons" and "complaint" may be same document — Taking cognisance of offence alleged — Question of whether or not complaint signed or in writing or whether it stated the facts constituting offence irrelevant — Police Form No. 52 commented upon.

Criminal Procedure Code (Cap.6), ss.128, 133, 134, 135 and 173 considered.

The Jurisdiction of Subordinate Courts to try criminal offences is not given by anything contained in the Criminal Procedure Code but by section 63 of the Courts Ordinance in the case of the Sessions Court and by section 85 of the same Ordinance in the case of the Court of a First Class Magistrate. The Criminal Procedure Code merely regulates the way in which that jurisdiction is to be exercised.

In connection with the commencement of criminal proceedings in a Magistrate's Court there are three things. There may be an application for a summons. A Magistrate may issue a summons in certain circumstances without a formal application and the Code does not in terms provide for the making of any application but that such an application may be made is clearly contemplated by section 133(ii). Then there may be an information and there may be a complaint, but an information and a complaint are entirely different things and the failure to distinguish between then can lead to very great confusion of thought. An information is a statement relating to the commission of an offence made to a Police Officer under section 107 of the Code and a complaint is an allegation made to a Magistrate with a view to his taking action under the Code.

The application for summons can also be the complaint on the basis of which the Magistrate must under section 128 take cognisance of the alleged offence. The questions whether or not it was signed or indeed was in writing at all or whether it stated the facts alleged to constitute the offence are wholly irrelevant and once it is made to him the Magistrate is bound to take cognisance of the offence alleged. Having taken cognisance of it he is bound to proceed to issue a summons if in his opinion there is sufficient ground for proceeding.

Cases referred to:—

(1) *Public Prosecutor* v. *Chia Chin Koon*, Muar Criminal Appeal No. 8 of 1956 — Unreported.

(2) *Public Prosecutor* v. *Tonkyn*, Kuantan Criminal Appeal No. 1 of 1958 — Unreported.

(3) *Public Prosecutor* v. *Brain*, Selangor Criminal Appeal No. 25 of 1958 — Unreported.

COURT OF APPEAL.

Bahaudin bin Mohd. Yacob (Federal Counsel) for the appellant.

P. Hall for the respondent.

Cur. Adv. Vult.

Thomson C.J.: This reference under section 34 of the Courts Ordinance raises a question as to the commencement of proceedings in Subordinate Courts.

On 8th December, 1957, a taxi driver named Hashim made a statement to a Police Officer relating to a collision between his vehicle and another vehicle.

On 28th January, 1958, the Police applied to the Magistrate at Sungei Patani for a summons against one George Russell Leonard on a charge of dangerous driving in contravention of section 4(1) of the Motor Vehicles (Driving Offences) Proclamation. This application was made on a form known as Police 52. The front of the form was headed "Application for Summons". It referred to the statement of the taxi driver, it alleged that Mr. Leonard had committed the offence of dangerous driving and it asked that a summons be issued against him for that offence. It concluded with the words "Application approved" initialled in ink by a Police Officer. On the reverse of the form was set out what was entitled "the information and complaint" of the taxi driver. This consisted of the statement which he had made to the Police on 8th December, 1957, and at the bottom were typed words to the effect that the original had been signed by him and by the Police Officer who recorded the statement. Presumably, though this is not stated on the record, the application was accompanied by a charge sheet and a form of summons for signature by the Magistrate.

The Magistrate thereupon signed and issued a summons in accordance with the application. This was served on Mr. Leonard and the trial commenced the same day as it was desired to have the evidence of a Police witness who was about to leave the country.

Mr. Leonard appeared and took no objection to this course. When charged he claimed trial and when the Police witness gave evidence he cross-examined him. The trial was then adjourned to 27th February.

When the trial was resumed on 27th February Mr. Leonard was represented by counsel who announced that he proposed to take the point that the complaint on the basis of which the summons had been issued was not signed and that the proceedings were accordingly a nullity. The trial was then again adjourned, with the